The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Serbia: Private Client (3rd edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding Private Client law in Serbia.

This Q&A is part of the global guide to Private Client.

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1. **Which factors bring an individual within the scope of tax on income and capital gains?**

Residence is the factor that brings an individual within the scope of tax on income and capital gains. Nationality of an individual is not relevant. A resident individual is subject to personal income tax and tax on capital gains with respect to worldwide income and gains, and a non-resident individual is subject to income tax and capital gains with respect to income having its source in Serbia.

A resident is an individual who, in a given calendar year: (i) has domicile in Serbia, or (ii) has

centre of business and vital interest in Serbia, or (iii) spends 183 days in Serbia, including with interruptions, in any 12 months' period starting or ending in that calendar year.

A non-resident is any individual who is not regarded as resident in accordance with the above definition. A non-resident is subject to taxation only with respect to income deriving from Serbian sources (e.g. employment income deriving from work in the country, rental income from renting of immoveable property situated in Serbia, dividend from shares held in a Serbian company, gains from disposal of real property situated in Serbia etc.).

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

Personal income taxation consists of taxation at source and of a supplementary annual income tax. Most types of income are taxed at source by withholding, such as e.g. employment income, dividend, interest, rental income, income from copyright-protected works, work-for-hire contracts, directors' fees etc. Withholding obligation rests with domestic legal entities only, while in case an individual receives income from sources outside of Serbia, such income is not subject to withholding tax, and an individual is required to report such foreign income and self-asses income tax.

Basis for taxation of employment income and investment income (dividend, interest) is gross income, while basis for taxation of other types of income is gross income less standard deductions for costs (those standard deductions vary between 20% and 50% of gross income). Self-employed registered sole entrepreneurs are subject to annual self-assessment of tax on the basis of profit shown in an annual income statement, adjusted for some expense items. Capital gains are taxed by assessment of tax authority.

The rates are as follows: (i) employment income – 10%, (ii) income from sole entrepreneurship – 10%, (iii) income from copyright-protected works, including software and from IP rights – 20%, (iv) income from investment (dividend, interest, return on investment units of investment funds) – 15%, (v) capital gains due upon disposal of certain assets (real property, shares in companies, other securities except government debt securities, copyright-protected works and other IP rights, investment units of investment funds) – 15%, (vi) rental income from renting real property – 20%, (vii) other various types of income, e.g. freelance work-for-hire contracts,

directors' fees, various payments and benefits to people who are not employees etc. are all subject to 20% rate.

An annual supplementary income tax is levied on the sum of annual income from the following sources: employment income, income from sole entrepreneurship, income from copyright-protected works and IP, rental income, income earned by freelance contractors, directors' fees etc. However, dividends, interest and capital gains are excluded for the purpose of the annual supplementary income tax framework. Resident individuals are subject to the annual supplementary income tax on their worldwide income, and non-residents only with respect to Serbian-source income.

For the purpose of the annual supplementary income tax, income of each type is aggregated on an annual level and decreased by the sum of withholding income tax and social security contributions paid on such income by withholding. The result is an aggregate net annual income (net of paid income tax and social security contribution where applicable), which is a starting point of establishing a tax base. An individual is subject to the annual supplementary tax only with respect to the net annual income exceeding the threshold of three times the average annual wage in Serbia according to the official statistics office. The threshold for the annual supplementary tax for 2018 was RSD 2,470,644 (roughly EUR 20,000). The first band is an aggregate net annual income exceeding the threshold of EUR 20,000 and up to the six times the average annual wage (roughly EUR 41,800) and it is subject to 10% rate. The second band is income exceeding the six times the average annual wage and it is taxed with 15%.

An individual whose aggregate net annual income exceeds the threshold of three times the average annual wage is required to file an annual supplementary income tax return by 15 May of the current year for the preceding year. The tax is paid within 15 days from the receipt of the tax authority's assessment.

Individuals who work in Serbia for local entities either on a proper employment agreement governed by the labour regulations, or under various types of agreements providing for flexible employment, self-employed sole entrepreneurs, unregistered freelance contractors, directors, board members etc. are subject to the mandatory social security contributions. They consist of the following three elements: (i) pension and disability insurance contribution at the aggregate rate of 25.5%, (ii) health insurance contribution at the aggregate rate of 10.3%, and (iii) unemployment insurance contribution at the aggregate rate of 0.75%. The social security contributions are capped at the monthly level (applicable to monthly wages and other monthly payments, except to freelance contracts) at five times the statistical average monthly wage. On the annual level the social security contributions are capped at the amount calculated by multiplying the monthly average wage by 12.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Domestic legal persons and self-employed registered entrepreneurs are required by law to withhold tax on income on behalf of individuals to whom they pay income. There is an exception to this rule only in case payments are made to an individual who is registered in Serbia as self-employed entrepreneur.

In case the social security contributions apply, a domestic entity or domestic registered entrepreneur which is the payor of income to an individual is required to withhold the contributions on behalf of that individual (and in case of a proper employment, on behalf of the employer).

However, when an individual earns income from a source outside of Serbia, a payor of such income, being a foreign entity with no registered presence in Serbia, is not required to make withholding payments on behalf of that individual to the Serbian budget. In such case the individual who is tax resident in Serbia is required to report foreign-source income and self-assess and pay income tax (and in certain cases also social security contributions). This obligation applies also to foreign nationals who are seconded to work in Serbia and their salaries or wages are paid abroad.

Capital gains realised through disposal of real property, shares, securities, IP rights are not taxed by withholding, but by tax authorities' assessment.

Withholding tax rates are as set out in answer to the question No. 2 above.

4. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is no wealth tax. Owners of real property situated in Serbia are subject to the Property Tax.

5. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

The Inheritance and Gift Tax is levied on individuals who are heirs and donees of certain assets, such as real property, cash in hand, savings and deposits, receivables, IP rights, moveable assets such as used automobiles, vessels, aircrafts, other movables (except specifically exempt ones). Inheritance and gift of certain assets, such as shares in companies and securities is exempt. Inherited or donated cash funds up to RSD 100,000 per year per one deceased or donor are also exempt.

Individuals who are regarded as tax residents for income tax purposes are also regarded as tax residents for the purpose of the Inheritance and Gift Tax. They are subject to the Inheritance and Gift Tax on inherited or donated assets situated in Serbia, as well as abroad. Foreign taxes paid on inherited assets or assets received as a gift can be credited against the Inheritance and Gift Tax (limited to the amount that would be calculated should the Inheritance and Gift Tax apply to foreign inheritance or gift).

Individuals who are regarded as non-residents for the income tax purposes are also regarded as non-residents for the purpose of the Inheritance and Gift Tax. They are liable to the Inheritance and Gift Tax only with respect to inherited assets or assets received as a gift situated on the territory of Serbia.

The Inheritance and Gift Tax is levied by assessment of the tax authorities, upon submission of a tax return by a heir or a donee. The tax basis is in case of inheritance, the market value of inherited assets less debts pertaining to such assets. In case of a gift, the tax basis is the market value of the gift.

The tax rates is 1.5% in case of heirs or donees who fall within the second statutory heir group in accordance with the intestacy rules (spouse, parents, parents' descendants).

The tax rate is 2.5% in case of heirs or donees who either fall within the third statutory heir group in accordance with the intestacy rules (grandparents and their descendants) or further statutory heir groups, or individuals who are not related to the deceased, or entities.

Tax return must be submitted by a person liable to pay tax within 30 days from the moment when the tax is triggered. In case of inheritance, the tax is triggered generally the date when the court decision on inheritance becomes final. In case of a gift, the tax is generally triggered when a valid gift contract or other instrument serving as the legal basis of a gift is executed in a proper form, or lacking such form, when the gift is received. A tax return can also be submitted via a public notary who executed a contract or a deed or a decision on inheritance (as the case may be).

Tax is paid upon assessment of the tax authority, within 15 days from receipt of the assessment.

Persons liable to pay tax are heirs (in case of inheritance) or donees (in case of a gift). However, in case of a gift, the donor is a subsidiary guarantor for the tax obligation of the donee (this liability becomes joint and several in case the donor undertook by contract to pay the gift tax).

6. **Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (e.g. business or agricultural assets), and how do any such reliefs apply?**

The full relief from the Inheritance and Gift Tax is available in cases of inheritance by heirs who fall within the first statutory heir group in accordance with the intestacy rules (children, other descendants, surviving spouse), and by the spouse and/or the parents of the deceased. In case of a gift, the full relief is available for gifts to children, other descendants and spouse.

Also, a partial relief is available (with respect to one flat or apartment only) in case of inheritance by heirs who fall within the second statutory heir group in accordance with the intestacy rules (spouse, parents, and parents' children) or in case of a gift to the same persons. This partial relief with respect to one apartment is available provided that the heir or the donee has lived with the deceased or the donor in the same household for a continuous period of at least one year prior to the deceased's death or the gift's receipt.

The full relief is also available for inheritance by or gifts made to foundations (which have public benefit purpose only), and endowments or associations provided that they are established for the public benefit purpose, and provided that the inherited or donated assets are used solely for such public benefit. No relief is available for endowments which are established for private

purposes.

7. **Do the tax laws encourage gifts (either during the donor’s lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?**

   Gifts for charity and other public benefit purposes are encouraged in the sense that such gifts are not subject to the Inheritance and Gift Tax. Please also see answer to question 6 above.

8. **How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?**

   A real property situated in Serbia is subject to the Property Tax. Person liable to pay the Property Tax is the sole owner, or co-owners, regardless of nationality or residence.

   Tax basis is the value of the property determined by the municipal tax authority on the basis of average price per square meter of properties in the relevant zone.

   Tax rates are determined by the municipality on the territory of which the property is situated. For land the tax rate can be up to 0.3%. For buildings, flats, apartments, offices the rates are progressive (from 0.4% to 2%) and the relevant bands are defined in accordance with the property's value.

   The Property Tax is assessed annually and is paid in four equal instalments.

9. **Are taxes other than those described above imposed on individuals and, if so, how do they apply?**

   There is a tax imposed on registered owners of automobiles, boats, ships, yachts, floating

barges used for hospitality purposes, aircrafts, and firearms. Depending on the type of asset, the tax is paid either simultaneously with the annual registration or upon issuing or extending license.

10. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

There are no tax incentives generally available to individuals who arrive or move to Serbia. However, effective from 1 March 2020, an advantageous payroll tax and social security contributions regime is introduced for individuals who have expertise or an educational degree which is rare at the domestic labour market, and who relocate to Serbia to commence an indefinite-term employment with a qualified Serbian-based employer and become tax resident of Serbia by relocating centre of business and vital interests there. Such individuals will benefit from a 5-year long 70% cut in the payroll and social security base.

11. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

An individual should seek tax advice on how to avoid situation of dual tax residence or conflict of tax residence. If there is a bilateral tax avoidance treaty in force between Serbia and his country of tax residence, the relevant rules on tax residence should be considered, including tie-breaker rule. Also, if an individual holds assets which can be disposed of without triggering taxation in the jurisdiction other than Serbia, it is advisable that the individual does so prior to moving his tax residence to Serbia.

12. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Pursuant to the Succession Act, there are two bases of succession: a Will, or, in the absence of the Will or in case the Will does not deal with the entirety of the estate, statutory succession

rules (intestacy). In any case, the succession is subject to the forced heirship rules.
In case of intestacy, heirs are ranked in five statutory heir groups, whereby each preceding group excludes the next, as follows:

1. The first statutory heir group consists of surviving descendants and a surviving spouse;

The estate is inherited on equal parts among the members of this group. If there is no surviving descendants, a spouse will not inherit the estate alone, but will be deemed as a member of the second statutory heir group.

2. The second statutory heir group consists of a surviving spouse and surviving parents (ascendants at the first degree);

The spouse generally gets half of the estate and parents get the other half. A share of the spouse can be increased or decreased depending on the circumstances. In case that spouse refuses or cannot inherit, parents will get the entire estate. If there are no parents who survived, or they refuse or cannot inherit, their share passes on to their living descendants. If neither parent left descendants, the spouse receives the entire estate.

3. The third statutory heir group consists of surviving grandparents from paternal and maternal lineage (ascendants at the second degree) and their descendants;

If inheritance was not possible in the second statutory heir group, the members of the third statutory heir group are called upon inheritance. In such case the estate is divided equally between paternal and maternal lineage, and within both lineages equally between surviving grandmother and grandfather. If any of the grandmothers or grandfathers are not alive, or refuses or cannot inherit, his/her share passes on to his/her descendants.

4. The fourth statutory heir group consist of great-grandmothers and great-grandfathers (ascendants at the third degree); etc.

In the absence of the statutory heirs, the ultimate heir is the Republic of Serbia.

The forced heirs are statutory heirs whose share in the estate is guaranteed by law as the reserved portion. The forced heirs are the following:

(i) in the first forced heir group: children, adoptive children, their descendants, and spouse;

(ii) in the second forced heir group: parents or adoptive parents, brothers and sisters;
(iii) in the third forced heir group: grandparents, great-grandparents, other ascendants.

The forced heirs of the first group generally get the reserved portion of 50% of what they would have inherited should the intestacy rules applied. For example, in case a spouse and one child survived, under the intestacy rules their shares would be 50% each. As the forced heirs, they are both entitled to 25% of the estate (half of 50%). A spouse is always entitled to a reserved portion of 50% of his/her statutory share (regardless of whether he/she inherits in the first or in the second statutory heir group).

The forced heirs of the second and third group are entitled to one-third of what they would have inherited under the intestacy rules.

The reserved portion is primarily a monetary claim, which means that the forced heir could primarily claim cash compensation and not title in a particular asset. However, this can be regulated differently in a Will, and also upon request of a forced heir who lived in the same household with a deceased, a court could grant him/her a title in a particular asset instead of cash compensation.

For the purposes of calculation of the reserved portion, the estate consists of all of the assets owned by the deceased at the time of death, including assets disposed of by a Will, net of his debts and costs such as costs of making an inventory of assets and the costs of funeral (net estate). The net estate is further increased by the value of gifts which deceased made to statutory successors during his life and gifts which he made to other persons during the last year of his life.

For the purpose of calculation of the reserved portion, the estate does not include assets validly transferred to descendants and spouse during the lifetime of the deceased under the valid agreement made in a form of a notarial deed. Also, funds spent on subsistence and education of statutory heirs, as well as charitable gifts are not included.

13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

There is a special regime for matrimonial property in the family law. Matrimonial property is a

common undivided property of spouses created during the marriage through their work or other contributions. Civil partnership is not recognised by law. Unmarried partners who live together can create a common undivided property, which is then governed by the same rules as the matrimonial property.

Matrimonial property is managed jointly by the spouses, and they are free to enter into contracts governing the managing and disposing of such common property.

Matrimonial property must be taken into account also for the succession purposes. In determining the estate of the deceased, a spouse has a claim for division of the matrimonial property.

14. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

Under the Conflict of Laws rules, the law governing succession of a person is the law of a country of the nationality of the deceased at the time of death.

Foreign nationals have equal rights under the Succession Act as Serbian nationals, under the conditions of reciprocity, unless provided differently by an international agreement. That means that foreign nationals can inherit property situated in Serbia where this is provided by a relevant international agreement (there are a number of bilateral agreements of Serbia with other countries providing for this possibility) or if the actual reciprocity exists. In case of doubt the Ministry of Justice may provide an opinion whether or not reciprocity exists between Serbia and a foreign country.

With respect to the question whether a person has legal capacity to make a Will, the governing law is the law of a testator's country of nationality at the time of making a Will.

A Will is legally valid in respect of its form if it is valid either under the law of the place where it is made, or under the law of a country of nationality or habitual residence of a testator at the time of making the Will or at death, or under laws of Serbia, or, in case of a real property, under the law of the place where the real property is situated. The same applies for validity of the Will's revocation.

Serbia is a member of the Convention of the Uniform Law on the Form of an International Will

(Washington D.C., 1973).

15. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Under the International Private Law (Conflict of Laws) rules, in case succession laws of another jurisdiction make reference to Serbian law, such reference is accepted by Serbian courts and Serbian substantive law applies, without having regard to the Serbian international conflict of laws rules.

16. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

An individual who is of at least 15 years of age and with legal capacity can make a Will.

A Will is always revocable, and testator can always make a different Will to replace the prior one.

Normally in case a testator has lost mental capacity after he has made a Will, such subsequent mental incapacity should not affect the Will's validity. However, in exceptional cases it is possible to request from the court to invalidate the certain provisions of the Will or the entire Will due to the testator's mental incapacity which prevented him to revoke the Will.

A consequence of dying without having made a Will is that the succession will be governed by the intestacy rules of the Succession Act.

Succession Act recognises several forms of a Will. A Will can be made in the following forms: (i) handwritten and signed by a testator, (ii) written in advance and signed before two witnesses who confirm it by signing, (iii) dictated and signed before a judge, (iv) signed before a Serbian consulate abroad, (v) made before public notary as a notarial deed, or (vi) before other

authorities in exceptional cases.

A Will can also have a form of an International Will made pursuant to the ratified Convention of the Uniform Law on the Form of an International Will (Washington D.C., 1973).

A testator may appoint one or more heirs in a Will, as well as one or more legatees. It is allowed to appoint a substitute heir for the case if the appointed heir could not or does not want to inherit.

Typical prohibited clauses in a Will include appointment of a heir's heir or legatee's heir, or a clause whereby the testator prohibits his heir from disposing of inherited assets or rights.

17. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The successors who formally accepted inheritance by way of a statement given before the judge are responsible for collecting in assets, paying debts and distributing to beneficiaries. Before division of assets is made, all successors who accepted inheritance manage the estate jointly and in case of a dispute the judge can appoint a trustee or order that each heir administers certain part of the estate.

However, in case of a Will a testator can appoint one or more executors of the Will. A duty of such executor is simply to take care that the dispositions of the Will are effected in accordance with its terms. He has no right to dispose of property unless the judge approves it. He has an obligation to report to the judge on his activities, and the judge can dismiss him.

Even if the executor of a Will is not appointed by the Will, a judge can appoint one or more such executors in the discretion of the judge, especially if the Will contains particular orders, terms and/or conditions.

18. Do the laws of your jurisdiction allow individuals to create

trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Serbian law provides for endowments (zadužbina) which are commonly formed for charitable and other public benefit purposes, such as e.g. promotion and protection of human, civil and minority rights, democratic values, European integration and international cooperation, sustainable development, regional development, gender equality, culture, mass media, science, education, arts, amateur sport, support for disabled, elderly, children, environmental protection etc.

However, endowments may also be formed for private purposes (e.g. supporting education of children). However, endowments could not be used for succession to private family wealth as they are not recognised as such vehicle by the Succession Act.

19. ## How is any such structure constituted, what are the main rules that govern it, is there any requirement for registration with or disclosure to any authority or regulator, and what information about the structure is available to the public?

An endowment is created as a legal person without members. It can be established by way of an establishment deed or a contract (in case of more than one founder). It can be also created by a Will, and in such case the judge who has jurisdiction for the inheritance proceedings will appoint an executor of the Will if the testator has not appointed one already. If an endowment is established by way of a Will, its aims may not be contrary to the provisions of the Succession Act setting out the prohibited clauses of a Will.

An endowment can be formed with an initial contribution of assets, rights and/or cash with the value of minimum EUR 30,000.

If an endowment is established by a Will with a private purpose (not charitable or public benefit) the transfer of testator's assets and rights to the endowment has no legal effect to his estate (i.e. the assets and rights so transferred remain to be in his estate). Such effect is only possible in case of an endowment the purpose of which is charity or other public benefit.

An endowment is subject to registration with the public registry of endowments and foundations and must file an annual financial statement with the public registry of financial statements.

It is also subject to an obligation to register its beneficial owners to the Central Registry of Beneficial Owners.

20. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Endowments are regarded as non-profit organisations, and in principle are not subjected to the corporate income tax (unless they earn income through selling goods or services, which would be very uncommon).

Endowments the purpose of which is charity or other public benefit are exempt on any taxation upon receiving gifts, donations, and other free-of-charge receipts of assets, including by way of a Will.

Tax laws do not provide for any different treatment of individuals on the basis that such individuals are members, directors or beneficiaries of an endowment.

21. Are foreign trusts, private foundations etc recognised?

Foreign endowments, foundations and similar organisations are recognised by Serbian law if they satisfy the conditions from a definition of a foreign endowment or foundation, namely that they are legal persons without members, having such status in accordance with the law of the country in which they are established and which law governs their operation, and that they have public benefit purpose or other purpose which is not contrary to the Constitution and laws of Serbia.

Foreign endowments and foundations and similar organisations that meet the above conditions may operate in Serbia through registered representative offices.

22. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

For tax purposes, Serbian law views foreign structures as legal persons if they have such status under the law governing their existence. Serbian tax law treats all foreign legal persons equally in the sense that if certain income is paid to a foreign legal person, such payment should be viewed as payment to a foreign legal person, and in case of certain types of income Serbian withholding tax apply on such payments.

In case of transparent structures under the law of the country in which such structure is established, from Serbian law perspective transparent status should be recognised and income attributed to individuals or legal persons who/which are owners/members of such transparent structure.

23. To what extent can trusts, private foundations etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

In case an endowment is established by way of a Will for a public benefit purposes, the assets, rights and money designated to be passed on to such endowment upon death of the deceased will be not be treated as being the part of his estate.

It is not possible to shelter assets from the creditors in case of an endowment created by a Will for private purposes.

24. What provision can be made to hold and manage assets for minor children and grandchildren?

Although very uncommon at present, the law permits that endowments are established for various private purposes, and one such purpose could be to hold and manage assets for minor children and grandchildren.

25. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Individuals with mental incapacity may be proclaimed as incapacitated only by the court and in this process a guardian is appointed. Due to the mandatory law nature of the incapacitation and appointment of a guardian, an individual could not influence who will become his guardian in case of such individual's incapacity. Guardians are most commonly spouses, children and other close relatives.

26. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

Please see answer to question No. 18.

27. What important legislative changes do you anticipate so far as they affect your advice to private clients?

No such legislative changes could be anticipated at the date of this guide.